

previous leadership of Chairman ROCKEFELLER.

There is another set of questions around how this was allowed to happen. When one knows that America has over and over prosecuted waterboarding, both as crime and as war crime; when one knows that the Reagan Department of Justice convicted and imprisoned a Texas sheriff for waterboarding prisoners; when one sees no mention of this history in the lengthy opinions of the Office of Legal Counsel at DOJ that cleared the waterboarding—no mention whatsoever; when assertions of fact made in those OLC opinions prove to be not only false but provably false from open source information available at the time; when one reads Chairman LEVIN's excellent Armed Services Committee reports on what happened at the Department of Defense, it is hard not to wonder what went wrong. Was a fix put in? And, if so, how? A lot of damage was done within the American institutions of government to allow this to happen.

If American democracy is important, damage to her institutions is important and needs to be understood. Much of this damage was done to one of America's greatest institutions—the U.S. Department of Justice. I am confident the Judiciary Committee, under Chairman LEAHY's leadership, will assure that we understand and repair that damage and protect America against it ever happening again.

Finally—and I am very sorry to say this—but there has been a campaign of falsehood about this whole sorry episode. It has disserved the American public. As I said earlier, facing up to the questions of our use of torture is hard enough. It is worse when people are misled and don't know the whole truth and so can't form an informed opinion and instead quarrel over irrelevancies and false premises. Much debunking of falsehood remains to be done but cannot be done now because the accurate and complete information is classified.

From open source and released information, here are some of the falsehoods that have been already debunked. I will warn you the record is bad, and the presumption of truth that executive officials and agencies should ordinarily enjoy is now hard to justify. We have been misled about nearly every aspect of this program.

President Bush told us “America does not torture” while authorizing conduct that America itself has prosecuted as crime and war crime, as torture.

Vice President Cheney agreed in an interview that waterboarding was like “a dunk in the water” when it was actually a technique of torture from the Spanish Inquisition to Cambodia's killing fields.

John Yoo, who wrote the original torture opinions, told *Esquire* magazine that waterboarding was only done three times. Public reports now indi-

cate that just two detainees were waterboarded 83 times and 183 times. Khalid Shaikh Mohammed reportedly was waterboarded 183 times. A former CIA official had told ABC News: “KSM lasted the longest on the waterboard—about a minute and a half—but once he broke, it never had to be used again.”

We were told that waterboarding was determined to be legal, but we were not told how badly the law was ignored and manipulated by the Department of Justice's Office of Legal Counsel, nor were we told how furiously government and military lawyers tried to reject the defective OLC opinions.

We were told we couldn't second guess the brave CIA officers who did this unpleasant duty, and then we found out that the program was led by private contractors with no real interrogation experience.

Former CIA Director Hayden and former Attorney General Mukasey wrote that military interrogators need the Army Field Manual to restrain abuse by them, a limitation not needed by the experienced experts at the CIA.

Let's look at that. The Army Field Manual is a code of honor, as reflected by General Petraeus' May 10, 2000, letter to the troops in Iraq. He wrote this:

Some may argue that we would be more effective if we sanctioned torture or other expedient methods to obtain information from the enemy. They would be wrong. . . . In fact, our experience in applying the interrogation standards laid out in the Army Field Manual . . . shows that the techniques in the manual work effectively and humanely in eliciting information from detainees.

We are indeed warriors. . . . What sets us apart from our enemies in this fight, however, is how we behave. In everything we do, we must observe the standards and values that dictate that we treat noncombatants and detainees with dignity and respect.

Military and FBI interrogators, such as Matthew Alexander, Steve Keinman, and Ali Soufan, it appears, are the true professionals. We know now that the “experienced interrogators” referenced by Hayden and Mukasey had actually little to no experience.

Philip Zelikow, who served in the State Department under the Bush administration, testified in a subcommittee that I chaired. He said the CIA “had no significant institutional capability to question enemy captives” and “improvised” their program of “coolly calculated dehumanizing abuse and physical torment.” In fact, the CIA cobbled its program together from techniques used by the SERE Program, designed to prepare captured U.S. military personnel for interrogation by tyrant regimes who torture not to generate intelligence but to generate propaganda.

Colonel Kleinman submitted testimony for our hearing, in which he stated:

These individuals were retired military psychologists who, while having extensive experience in SERE (survival, evasion, resistance, and escape) training, collectively possessed absolutely no firsthand experience in the interrogation of foreign nationals for intelligence purposes.

To the proud, experienced, and successful interrogators of the military and the FBI, I believe Judge Mukasey and General Hayden owe an apology.

Finally, we were told that torturing detainees was justified by American lives saved—saved as a result of actionable intelligence produced on the waterboard. That is the clincher, they say—lives saved at the price of a little unpleasantness. But is it true? That is far from clear.

FBI Director Mueller has said he is unaware of any evidence that waterboarding produced actionable information. Nothing I have seen convinces me otherwise. The examples we have been able to investigate—for instance, of Abu Zubaida providing critical intelligence on Khalid Shaikh Mohammed and Jose Padilla—turned out to be false. The information was obtained by regular professional interrogators before waterboarding was even authorized.

As recently as May 10, our former Vice President went on a television show to relate that the interrogation process we had in place produced from certain key individuals, such as Abu Zubaida—he named him specifically—actionable information. Well, we had a hearing inquiring into that, and we produced the testimony of the FBI agent who actually conducted those interrogations.

Here is what happened. Abu Zubaida was injured in a firefight and captured in Afghanistan. He was flown to an undisclosed location for interrogation. The first round of interrogation conducted professionally by Soufan and his assistant from the CIA produced such significant intelligence information that a jet with doctors on it was scrambled from Langley—from this area—and flown to the undisclosed location so that the best medical care could be provided to Abu Zubaida so he could continue to talk. That was the first round of information.

In the second interrogation, conducted consistent with professional interrogation techniques, Abu Zubaida disclosed that the mastermind of the 9/11 attacks was Khalid Shaikh Mohammed. That may be the apex piece of intelligence information we have obtained during the course of the conflict.

At that point, the private contractors arrived, and for some reason Abu Zubaida was handed over to them so they could apply their enhanced interrogation techniques. Ali Soufan testified that at that point they got no further information. What triggered the first round of information was that Soufan knew about Zubaida's pet name that his mother used for him. When he used that nickname, Zubaida fell apart. He didn't know how to defend himself, and he began to disclose this very important information.

Knowledge, outwitting people, playing on mental weaknesses, taking advantage of our skills as Americans—that is what worked and got the information about Mohammed. He was